IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2386 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K. RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GENERAL SECRETARY, KT KAMDAR UNION, CHARAVADA,

Versus

PRASHANT MUKUNDRAY MEHTA, C/O KT MAJDOOR MAHAJAN SANGH

Appearance:

MR DA SURANI for Petitioner

MR AK CLERK for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/06/2000

CAV JUDGEMENT

Heard the learned advocates for the respective parties.

2. The brief facts of the present writ petition are

that, the petitioner is General Secretary of K.T Kamdar Union, which is a registered Union under the provisions of Trade Unions Act, 1926 and its registration number is G-5732. On 21st July, 1998, the petitioner has applied for registration of his Union under the provisions of Section 13 (1), (2), (3) of the Bombay Industrial Relations Act, 1946 to the Assistant Registrar, respondent no. 2 herein. However, the said application for registration came to be rejected by the respondent no. 2 on 29.4.1999.

3. Being aggrieved and dissatisfied by the said order of rejection, the applicant preferred Special Civil Application No. 3749 of 1999 before this Court. The said Special Civil Application came to be allowed on 4.8.1999 by this Court [Coram : D.C Srivastava, J.] by directing the respondent no. 2 to grant necessary certificate to the petitioner within a period of three weeks from the date of said order. Thus, after passing of the aforementioned order, the respondent no. 2 registered the petitioner Union and has given certificate of registration thereof. Against the said registration of petitioner Union, the respondent no. 1 herein moved an Appeal under the provisions of Sec. 20 of the Bombay Industrial Relations Act before the Industrial Court at Rajkot. Thereafter, the Industrial Court, Rajkot has passed an ad-interim order dated 15th September, 1999 in Appeal No. (IC) 5 of 1999 granting ad-interim relief in favour of the respondent no. 1 Union. The petitioner Union thereafter filed Contempt Petition being Misc. Civil Application No. 2043 of 1999 in Special Civil Application No. 3749 of 1999 The said Contempt proceedings came to be decided by the Division Bench of this Court on 24th September, 1999. Thereafter, the Industrial Court has considered the appeal on merits and ultimately passed an order dated 17.1.2000 allowing the appeal of the respondent no. 1. The order passed by the respondent no. 2 on 21.8.1999 entering the petitioner Union as a `representative union' in cotton textile industry in the local area of Halvad taluka of Surendranagar District was thereby set-aside. The Registrar under the provisions of Bombay Industrial Relations Act was directed to examine and process the application of the respondent no. 1 herein [i.e., K.T Majdoor Mahajan Sangh] dated 11.11.1998 in accordance with law. Against the said order passed by the Industrial Court, Rajkot again the petitioner Union preferred Contempt Petition before this Court being Misc. Civil Application No. 338 of 2000 in Special Civil Application No. 3749 of 1999 which came to be decided by the Division Bench on 21.2.2000. In the said

proceedings, the respondent no. 1 Union filed its Affidavit-in-Reply on 2nd April, 2000 producing therewith copy of the earlier two orders passed in the contempt proceedings. It is also pertinent to note that petitioner Union has also preferred Special Civil Application No. 10064 of 1999 challenging the ad-interim order passed by the Industrial Court in Appeal (IC) No. 5 of 1999 dated 15th September, 1999. In the said proceedings, this Court [Coram : M.C Patel, J.] on 16th December, 1999 directed the Industrial Court to hear and decide the interlocutory application in accordance with law within a period of one month from the date of communication of the said order.

4. Learned advocate Mr. Surani appearing on behalf of petitioner Union submitted that respondent no. 2 initially passed an order dated 29.4.1999 wherein the application filed by the petitioner Union under Sec. 13 (1), (2) & (3) which has been rejected by order dated 29th April, 1999 challenged in Special Civil Application No. 3749 of 1999 and after considering the provisions of Sec. 13 (1), (2) & (3), this Court has passed an order dated 4.8.1999 allowing the writ petition with a direction that the impugned order dated 29.4.1999 [Annexure F to the petition] be quashed and it was directed to the Assistant Labour Commissioner to grant necessary certificate to the petitioner within a period of three weeks from the date of that order. Therefore, according to Mr. Surani, the respondent no. 2 has acted on the basis of the orders and direction issued by this Court and therefore the Industrial Court has no jurisdiction to entertain Appeal under the provisions of Sec. 20 of the Bombay Industrial Relations Act, 1946 and the Industrial Court has no jurisdiction to pass any order contrary to the directions issued by this Court in Special Civil Application No. 3749 of 1999. Mr. Surani further submitted that the respondent no. 1 has no right to file appeal because respondent no. 1 was not a party to the proceedings before the respondent no. 2-Authority, and therefore, respondent no., 1 cannot have a right to file an appeal before the Industrial Court challenging the order dated 21.8.1999 passed by the respondent no. 2 in favour of the petitioner Union. According to Mr. Surani, if any the respondent no. 1 has any grievance against the said order, the respondent no. 1 must have to prefer Letters Patent Appeal against the said order made by this Court in Special Civil Application No. 3749 of 1999. Mr. Surani urged that this Court has considered the merits of the matter and also considered the provisions of Sec. 13 (1) (2) (3) of the Bombay Industrial Relations Act, 1946 and also

considered the fact that there were 619 members of the petitioner Union and at the time of inspection, 128 workmen were absent. Thus, if 128 members who were absent for this cause, then five per cent should have been worked out on number 491 and even if twenty five per cent formula was to be applied, it should have been applied on a figure of 491, and at this rate also, the total number of members supporting should not have exceeded 121 members in any case. Thus, even according to the calculation of the authority, 133 members supported the petitioner union. And therefore, the application for registration of the petitioner Union should not have been otherwise rejected and since this was done, it was a case of total non-application of mind and improper exercise of jurisdiction. According to Mr. Surani, when this Court has considered the merits of the matter and came to the conclusion that the impugned action cannot be sustained, and therefore, the Industrial Court has no jurisdiction to go into the merits of the matter, wherein the Certificate dated 21.8.1999 which has been issued by the respondent no. 2 is legal and valid and based upon the directions issued by this Court. Mr. Surani further pointed out that the reasoning given by the Industrial Court is prima facie erroneous because the Industrial Court has considered provision of Sec. 13 (1) that the Union was having not less than 25% of the membership out of the total number of employees employed in any industry in any local area, therefore, the Industrial Court has committed error in considering the percentage of total number of employees in the industry/undertaking, and therefore, on that ground also the order passed by the Industrial Court is required to be set-aside. Mr. Surani further submitted that the Industrial Court has not considered the provisions of sub-clause (1), (2), (3) of Sec. 13 for registration as a `Qualified Union' or `primary union'.

On the other hand, learned advocate Mr. Clerk appearing for the respondent no. 1 -Union has pointed out that this petition is not maintainable as the petitioner has not come with clean hands and has suppressed the material facts with a view to mislead this Court, and therefore, the petitioner is not entitled to any relief and the present writ petition is required to be dismissed in limine. Mr. Clerk further pointed out that the Industrial Court has not committed any jurisdictional error or any error apparent on the face of the record, and therefore, this Court may not reappreciate the evidence and interfere with the finding of fact recorded by the Court below while exercising the powers under Art. 226 & 227 of the Constitution. Mr.

Clerk further urged that petitioner Union had moved an application dated 21.7.1998 under the provisions of Sec. 13 (1) of the Bombay Industrial Relations Act, 1946 for being registered as a `representative union' for the Cotton Textile Industry for the local area of Halvad Taluka of Surendranagar District and the Respondent no. 1 has also filed an application on 11.11.1998 for being registered as a `representative union' for the same industry and for the same local area. The respondent no. 1 has also made an application dated 6-3-1999 to be joined as a party in the proceedings before the registrar at the time when he was considering the application of the petitioner Union dated 21.7.1998, however, the said application was rejected by the Registrar on 23.3.1999. Mr. Clerk further submitted that being aggrieved and dissatisfied with the said rejection, the respondent no. 1 Union preferred an appeal on 12.4.1999 before the Industrial Court and in the said appeal, the Industrial Court was pleased to pass an order dated 12.4.1999 to the effect that respondent no. 1 Union should be heard, while deciding the application dated 21.7.1998. Ultimately, the application dated 21.7.1998 filed by the petitioner Union came to be rejected by the Registrar by its Order dated 29.4.1999 and the very order is under challenged under Special Civil Application No. 3149 of 1999 without joining the respondent no. 1 Union as a party and this fact has been suppressed by the petitioner Union in the said application. Mr. Clerk further submitted that this is not only a case of suppression of material facts but also it amounts to misleading the Court by making such statements before the Court viz; `it is further stated that the petitioner union is the only union which has preferred an application for registration and no other union is running in the said factory whether registered or unregistered.' Mr. Clerk further urged that the petitioner has not misled the Court on one occasion but on various occasions, the petitioner Union has misled the Court by making to believe the Court that Sec. 13 (2) of the Bombay Industrial Relations Act was the relevant provision whereas the relevant provision was Section 13 (1) of the Act, which was rightly applied by the Registrar while rejecting the application of the petitioner Union. Mr. Clerk submitted that due to misleading averments and submissions made by the petitioner Union, this Court has passed an order on 4th August, 1999 in Special Civil Application No. 3749 of 1999 and therefore, the respondent no. 2 has passed an order in favour of the petitioner Union dated 21st August, 1999 registering the petitioner Union as a `Representative Union'. He further submitted that being aggrieved and dissatisfied by the aforesaid order dated

21.8.1999, the respondent no. 1 Union preferred an Appeal No. (IC) 5 of 1999 before the Industrial Court, Rajkot and thereafter petitioner Union immediately filed Contempt Petition being Misc. Civil Application No. 2043 of 1999 alleging that the Industrial Court, Rajkot had committed contempt of court by passing an ex parte interim order and the said contempt petition subsequently came to be dismissed by the Division Bench of this Court by an order dated 24.9.1999, and thereafter, the petitioner Union had moved Special Civil Application NO. 10064 of 1999 wherein the learned Single Judge of this Court has passed an order dated 16.12.1999 wherein the Industrial Court was directed to hear and decide the interlocutory application within a period of one month therefrom. Mr. Clerk further submitted that according to the provisions of Sec. 13 (1) of the Act, the relevant membership was for a continuous period of immediately preceding three months viz., April, May, and June, 1998 because application filed by the petitioner Union dated 21.7.1998 states that in December, 1997 the membership of the petitioner Union was 11 employees, in January, 1998 it was same i.e., 11 employees, and in the month of February, 1998 it was 200 employees, and such application does not even state the membership of the petitioner Union for the relevant period as required under the law. Mr. Clerk further pointed out that in the spot enquiry conducted by the Registrar on 15.4.1999 it was revealed that there are total 619 employees working the establishments out of whom 491 were present at the time of enquiry, 133 employees favoured the petitioner Union and 210 members favoured the respondent no. 1 Union, and therefore, as per the provisions of Sec. 13 (1) of the Act, the required membership is not less than 25% of the total number of employees employed in any industry in any local area, and therefore, the petitioner Union was not having requisite membership for being registered as a `Representative Union'. Mr. Clerk further pointed out that even otherwise also, the petitioner Union is disqualified for being registered as an `Approved Union' since its constitution itself does not contain the required provisions as per the provisions of Sec. 23 of the B.I.R Act; as found by the Industrial Court in para 11 of the impugned judgment. He further submitted that the petitioner Union had paid the prescribed fees for registration on 17.3.1998 wherein the resolution of the Union seeking registration under the Act was passed only on 16.7.1998 and the application was filed on 21.7.1998, and therefore, the resolution for registration under the Trade Unions Act was passed in the first meeting held on 18.11.1997 whereas the petitioner Union stated in its application to the Registrar that the

Union was registered under the Trade Unions Act on 24.9.1997. Thus, according to Mr. Clerk, the petitioner Union has misled the Courts by not giving correct and true picture, and therefore, this petition is required to be dismissed.

I have heard both the learned advocates at length and considered the relevant provisions of Sec. 13 (1), (2) (3) and Secs. 20 and 23 of the B.I.R Act. Sec. 13 (1) (2) and (3) of the Bombay Industrial Relations Act reads as under :-

`13. Application for registration -

(1) Any union which has for the whole of period of three calender months immediately preceding the calender month in which it so applies under this section a membership of not less than twenty five percent of the total number of employees employed in any industry in any local area may apply in the prescribed form to the Registrar for registration as a Representative Union for such industry in such local area.

(2) If in any local area no Representative Union has been registered in respect of any industry union which has for the whole of the period of three calender months immediately preceding the calender months in which it so applies under this section a membership of not less than five percent of the total number of employees employed in such industry in the said area may apply in the prescribed form to the Registrar for registration as a Qualified Union for such industry in such local area.

(3) If in any local area, neither a Representative Union nor a Qualified Union has been registered in respect of an industry, a union having membership of not less than fifteen percent of the total number of employees employed in any undertaking in such industry in the said area and complying with the conditions specified in section 23 as necessary for its being placed on the approved list may

apply in the prescribed form to the Registrar for such registration as Primary Union for such industry in such industry in such local area.'

After considering the provisions of Sec. 13 (1), it is very clear that any Union which has for the whole of the period of three calender months immediately preceding the calender month in which it so applies under this Section, a membership of not less than 25% of the total number of employees employed in any industry in any local area may apply in the prescribed form. Therefore, the relevant and important factor is that `Union must have 25% membership of proceeding three months on the date of application out of the total number of employees employed in any industry in any local area, and therefore, this aspect has been considered by the Industrial Court while deciding the appeal, wherein in paragraph 12 of the order it is categorically mentioned that, `I have considered the provision of Sec. 13 of the Act together with the Form-E. It appears to me that the provisions of the Act require that total number of employees employed in the Industry/Undertaking is to be taken into account for the purpose of percentage of membership of a Union.' The Industrial Court has rightly considered the result of the spot enquiry which was produced on record at page 56, paragraph 14 wherein break up has been given by the registrar. The said break-up is reproduced hereunder :-

133 Statements final [meaning thereby that those statement supported the respondent no. 2].

210 Statements given by employees who were supporting the Majur Mahajan [present appellant]

87 Statements were of those persons whose names were borne on the muster rolls but their names were not born in the membership register or counter foils of receipt books.

20 Statements were of those persons whose names were neither born in the muster rolls, nor in the membership register, no in the counter foils of the receipt books.

41 Statements were given by such persons who were not the members of any Union.

Considering the break up produced hereinabove, which is the result of the spot enquiry, it is evident that out of 619 employees, 491 employees gave their statements and out of that 210 statements gave their statements in support of the respondent no. 1 Union and 133 gave statements in favour of the petitioner Union, and therefore, the petitioner Union is found not having specific membership of 25% as required under the provision of Sec. 13 (1) of the Bombay Industrial Relations Act. The result of the spot inquiry has been verified by the Industrial Court in detail and came to the conclusion that petitioner Union knew that the respondent no. 1 had also applied for being a `representative union', however, petitioner Union did not state this fact by filing counter affidavit before this Court nor the present respondent no. 3 ie., Government [who was respondent no. 2 in Special Civil Application] filed any counter affidavit, and therefore this Court had to accept the said statement that there was no other Union in the factory, and therefore, it is a case of misleading the Court by not giving true, correct picture and suppression of material facts before the Court. In the light of the observations made by the Industrial Court, it is also required to be considered the observations made by the Division Bench of this Court in the contempt proceedings being Misc. Civil Application No. 2043 of 1999 wherein the Division Bench has observed that, `..If at all, an attempt of this type of trying to pressurize the Judge by bringing out an unwarranted application for taking contempt action is itself an abuse of the process of the Court. This High Court is not mere to denigrate the subordinate Judges and it is the duty of the High Court to protect them against such unwarranted attacks. We are not here to demoralize Judges by issuing contempt notice on any such frivolous application. If at all, contempt action is warranted against the applicant in this matter.' Considering all the aspects of the matters, the Division Bench ultimately rejected the contempt petition.

With regard to the next contention raised by Mr. Surani that the respondent No. 1 Union being not a party to the main proceedings before the Registrar and therefore, he has no authority to file the appeal. Now, this contention has been considered in detail by the Industrial Court in its judgment at paragraph no. 18. While dealing with this contention, the learned Judge has rightly come to the conclusion that the respondent no. 1 Union has rightly challenged the order passed by the

Registrar because the respondent no. 1 Union is having majority even as per the out come of the spot enquiry. The Industrial Court has rightly observed that, `.... ..he {the respondent no.1] cannot be expected to sit silently and watch a minority union carrying out or execute contracts, agreements and settlements with the employer which may or may not help the members employees of his Union.' Therefore, considering all these aspects, the Industrial Court has rightly allowed the appeal and passed the appropriate order in accordance with law.

I have perused the entire award passed by the Industrial Court which was read over by Mr. Surani. However, Mr. Surani was unable to point out any infirmity or any error apparent on the face of the record calling upon this Court to interfere with the same. Therefore, according to my opinion, the Industrial Court has not committed any error which is apparent on the face of the record and no infirmity has been pointed out nor any jurisdictional error was pointed out, and therefore, according to my opinion, this Court while exercising powers under Arts. 226 & 227 of Constitution is having limited jurisdiction to consider the order passed by the Courts below. And further, this Court cannot reappreciate the evidence and findings given by the Industrial Court which is based on facts and documents available on record. This Court also cannot act as an appellate authority while exercising the powers under Arts. 226 & 227 of the Constitution. Recently, the Apex Court in the case of Indian Overseas Bank vs. I.O.B Staff Canteen Workers' Union & Another, reported in 2000 SCC Lab.& Service 471 has held that the High Court while exercising the powers under Art. 226 and 227 of the Constitution cannot interfer with pure finding of fact and its is further observed that interference with pure finding of fact and reappreciation of evidence is not permissible. The High Court does not exercise appellate jurisdiction and insufficiency of evidence or that another view is possible. Held, no ground to interfere with findings of Industrial Tribunal. Writ Judge could only see if the legally established criteria for grant of relief were satisfied or not. Considering the decision of the Apex Court, when there is no substance in this petition and no jurisdictional error committed by the Industrial Court is pointed out, this petition requires to be dismissed.

In the result, this writ petition is dismissed as having no merits. There shall be no order as to costs.

16.6.2000 [H.K. Rathod, J.]

Prakash*